

Notice of Allowability

Application No.

10/771,049

Examiner

Dennis Ruhl

Applicant(s)

GROSS, JOHN N.

Art Unit

3629

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the after final amdt of 9/26/07.
2. ☒ The allowed claim(s) is/are 2-7, 10-18, 21-25, 27-29, 35-41.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).


* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☐ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☒ Other Attachment A regarding IDS of
10/10/07


DENNIS RUHL
PRIMARY EXAMINER

Art Unit: 3629

Attachment A:

With respect to the IDS of 10/10/07 applicant has submitted a certification statement that states that no information in the IDS was known after making reasonable inquiry more than 3 months prior to the filing of the IDS statement. The prosecution history and the record itself contradict this statement. Two NPL references that applicant is citing to the examiner were actually cited by the examiner in September of 2005 (Netflix Freak article and dvdrentalsystems article). Applicant's certification statement is factually incorrect and cannot be accepted. Another NPL document cited is a copy of an amendment was in another application that was filed with the PTO in April of 2007. This is clearly more than 3 months prior to 10/10/07. The examiner also notes that quite a few if not all of the US patents being cited were cited to applicant more than 3 months ago (on 982 form from the examiner). Because of these inaccuracies the entire IDS has been denied entry because the certification statement relied upon by applicant is factually incorrect and is not possible based on the application prosecution record itself. The examiner cannot knowingly accept a certification statement that is known to be false. Applicant was aware of at least the above-mentioned references more than 3 months prior to 10/10/07. None of the references cited in the IDS statement have been considered.



DENNIS RUHL
PRIMARY EXAMINER